

Appl. No. : **09/815,242**
Filed : **March 21, 2001**

REMARKS

Claims 1-102 are currently pending in this application. Claims 1-11, 13-30, 32-44 and 70 are withdrawn without prejudice or disclaimer. Claims 12, 31, 43-69 and 71-102 are currently presented for examination.

Claims 45 and 85 have been amended. Neither amendment alters the scope of these claims. Support for each amendment can be found in the claims as originally filed. Accordingly, no new matter has been added to this application.

After careful consideration of the remarks set out in the Office Action of September 23, 2003, Applicants respectfully traverse the Examiner's claim rejections.

Rejection under 35 U.S.C. § 112, second paragraph

The Examiner rejects Claims 45 and 85 under 35 U.S.C. § 112, second paragraph as allegedly failing to particularly point out and claim subject matter which is considered inventive. In particular, the Examiner asserts that Claims 45 and 85 are indefinite because the claims from which they depend allegedly recite "determining the degree" rather than "determining step" as recited in Claims 45 and 85.

Applicants respectfully submit that unamended Claims 45 and 85 are not indefinite, however, in order to expedite prosecution of the instant application, Applicants have amended Claims 45 and 85 to remove the phrase "said determining step" and incorporate in place thereof the language or element (c) of Claims 31 and 12, respectively.

In view of the above claim amendments, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 112, second paragraph.

Rejection under 35 U.S.C. § 112, first paragraph

The Examiner rejects Claims 12, 31, 45-69 and 71-102 under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey that the Applicants has possession of the claimed subject matter. In particular, the Examiner asserts that Claims 12, 31, 45-69 and 71-102 are not supported because the specification allegedly contains only a description of the *Staphylococcus aureus* gene encoding a gene product whose activity or amount is reduced by an antisense of SEQ ID NO: 1463. Applicants respectfully disagree.

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The Examiner correctly points out that the instant application describes a gene proliferation-required gene from *Staphylococcus aureus* having whose activity is reduced by an antisense nucleic acid of SEQ ID NO: 1463. This gene, which has been assigned SEQ ID NO: 4228, is the gene is known as *yphC*. The proliferation-required polypeptide from *S. aureus*, which is encoded by the *yphC* gene, is the YphC protein of SEQ ID NO: 12600. Additionally, Applicants have described at least six antisense nucleic acids which reduce the activity or amount of the product of the *yphC* gene as well as detailed methods of obtaining additional inhibitory antisense nucleic acids.

In the instant patent application, Applicants describe, among other things, methods for screening candidate compounds for their ability to inhibit cellular proliferation. The claims that are currently presented for examination (Claims 12, 31 and claims dependent thereon) are drawn to screening procedures accomplished by providing to a cell a sublethal level of an antisense nucleic acid which reduces the activity or amount of a product of a *yphC* gene or by providing an antisense nucleic acid which reduces the activity or amount of a product of a gene homologous to a *yphC* gene, thereby producing a sensitized cell. The sensitized cell is contacted with the compound and the degree to which the compound inhibits proliferation of the sensitized cell relative to a nonsensitized cell is determined.

Applicants disagree with the Examiner's contention that the instant specification does not describe any gene within the scope of the claims other than the gene sequence from *Staphylococcus aureus*. In fact, Applicants have provided *yphC* genes from at least six additional organisms, including *Escherichia coli* (SEQ ID NO: 6154), *Haemophilus influenzae* (SEQ ID NO: 7273), *Pseudomonas aeruginosa* (SEQ ID NO: 7857), *Streptococcus pneumoniae* (SEQ ID NO: 9420), *Salmonella typhi* (SEQ ID NO: 9605) and *Enterococcus faecalis* (SEQ ID NO: 3966). Applicants have also described the corresponding polypeptides encoded by these genes (SEQ ID NOs: 10251, 10969, 11955, 13518, 13703 and 10689, respectively).

In view of the foregoing, Applicants respectfully submit that the instant specification includes sufficient written description to support the claims currently presented for examination. Accordingly, Applicants respectfully request that the Examiner withdraw her rejection of Claims 12, 31, 45-69 and 71-102 under 35 U.S.C. § 112, first paragraph.

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CONCLUSION

Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.


Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 23, 2003

By: _____


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